

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JAMES E. ZALEWSKI and DRAFTICS, LTD.,

Plaintiffs,

vs.

T.P. BUILDERS, INC. et al.,

Defendants

Civil Action No.
1:10-cv-876 (GLS/RFT)
(Lead Case)

JAMES E. ZALEWSKI and DRAFTICS, LTD.,

Plaintiffs,

vs.

CICERO BUILDER DEV., INC. et al.,

Defendants

Civil Action No.
1:11-cv-1156 (GLS/RFT)
(Companion Case)

Declaration of Plaintiffs's Attorney Lee Palmateer

I, Lee Palmateer, depose and say under penalty of perjury as follows:

1. I am an attorney duly admitted to practice law in the courts of the Stat of New York. I represent plaintiffs James E. Zalewski and Draftics, Ltd. in this case and submit this Declaration in opposition to Defendants DeRaven and T.P Builders' attorney's fees motions (Dkts. 196 and 197), and more specifically to correct an inaccuracy in Plaintiffs Memorandum of Law (Dkt. 200).

2. In their motions, Defendants asserted that naming 90 parties in the original Complaint, including homeowners, is evidence that Mr. Zalewski had ulterior motives in this law suit. That issue was addressed at pp. 2 and 9-11 in his Memorandum of Law (Dkt 200, pp. 4 and 11-13) by pointing out, among other things that Mr. Zalewski quickly dismissed most of the

parties and, of the dismissed parties, “only three appearances were made among them” (emphasis added) (Dkt. 200, p. 4) and “only two appearances were made by homeowners.” (Dkt. 200, p. 12).

3. I prepared the Memorandum of Law, including the above quoted passages. The quoted passages were based on my mistaken, but good faith misreading and misunderstanding of the procedural history that preceded my appearance in the case, of the court docket, and my review of the files, which appear to be incomplete, that I received from my predecessor attorney. In reviewing the docket subsequent to filing Mr. Zalewski’s Memorandum of Law, I realized that I made a mistake and that more appearances were made than I had understood in my first review. I therefore make the following clarifications and corrections after performing a more thorough review.

4. Upon information and belief, the original Complaint (Dkt. 1) grouped the parties in to two categories, namely those individuals who were named as homeowners (hereinafter “Homeowners”) and those individuals and business entities, such as designers, builders, real estate companies, and individual venturers, that were named because they had some involvement in the commercial exploitation of Mr. Zalewski’s designs, (hereinafter “Commercial Parties”). The Commercial Parties were named first, followed by the Homeowners, who were expressly identified as “Owner(s) of Record.”

5. According to my count: Ninety (90) parties were named in the original complaint and seventy-eight (78) of them were dismissed by stipulation; twenty-five (25) of the dismissed parties were Commercial Parties, eight (8) of whom appeared before being dismissed and seventeen (17) of whom did not; and Fifty-three (53) of the dismissed parties were Homeowners, fifteen (15) of whom appeared before being dismissed and thirty-eight (38) of whom did not.

6. During the process of my review of the docket for this Declaration, it became apparent to me that DeRaven's attorneys (hereinafter "HRFM" for Heslin Rotheberg Farley & Mesiti P.C.) appeared in the case on behalf of the following seven (7) parties on the following dates:

- a. Homeowners Randi and Thomas Bult on August 20, 2010 (Dkt. 7 and 8);
- b. Engineering firm Ingalls & Associates, LLP on August 20, 2010 (Dkt. 9);
- c. Homeowners Donald and Joan Dawson on August 23, 2010 (Dkt. 10); and
- d. and designers Roxanne Heller and DeRaven Design and Drafting on November 30, 2010 (Dkt. 81).

7. Orders on stipulation were entered dismissing the Bults and Dawsons on October 4, 2010 (Dkt. 47) and Ingalls & Associates on October 25, 2010 (Dkt. 56). The parties stipulated and both Orders direct "each party to bear his own attorneys' fees and costs."

8. I declare under penalty of perjury that the foregoing is true and correct, except as to matters alleged on information and belief, and that as to those matters I believe them to be true, and I make this Declaration pursuant to the Federal Rules of Civil Procedure and with the knowledge that any knowingly false statement made herein by me is punishable under the penalty of perjury, fine and/or imprisonment.

Dated: August 24, 2012

/s/Lee Palmateer
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CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF), including:

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And, I hereby certify that I have mailed by the United States Postal Service the document to the following non-CM/ECF Participants:

NONE

Dated: September 27, 2012

/s/Lee Palmateer
Lee Palmateer